

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1510

AN ACT

AMENDING SECTIONS 13-4501, 13-4503, 13-4505, 13-4508, 13-4509, 13-4517, 36-501, 36-521, 36-523, 36-529, 36-531, 36-533, 36-534, 36-540, 36-540.01, 36-541.01, 36-542, 36-543, 36-544, 36-546 AND 36-3701, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICE EVALUATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4501, Arizona Revised Statutes, is amended to
3 read:

4 13-4501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Clinical liaison" means a mental health expert or any other
7 individual who has experience and training in mental health or developmental
8 disabilities and who is qualified and appointed by the court to aid in
9 coordinating the treatment or training of individuals who are found
10 incompetent to stand trial. If intellectual disability is an issue, the
11 clinical liaison shall be an expert in intellectual disabilities.

12 2. "Incompetent to stand trial" means that as a result of a mental
13 illness, defect or disability a defendant is unable to understand the nature
14 and object of the proceeding or to assist in the defendant's defense. In the
15 case of a person under eighteen years of age when the issue of competency is
16 raised, incompetent to stand trial also means a person who does not have
17 sufficient present ability to consult with the person's lawyer with a
18 reasonable degree of rational understanding or who does not have a rational
19 and factual understanding of the proceedings against the person. The
20 presence of a mental illness, defect or disability alone is not grounds for
21 finding a defendant incompetent to stand trial.

22 3. "Mental health expert" means a physician who is licensed pursuant
23 to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to
24 title 32, chapter 19.1 and who is:

25 (a) Familiar with this state's competency standards and statutes AND
26 CRIMINAL AND INVOLUNTARY COMMITMENT STATUTES.

27 (b) Familiar with the treatment, training and restoration programs
28 that are available in this state.

29 (c) Certified by the court as meeting court developed guidelines using
30 recognized programs or standards.

31 4. "Mental illness, defect or disability" means a psychiatric or
32 neurological disorder that is evidenced by behavioral or emotional symptoms,
33 including congenital mental conditions, conditions resulting from injury or
34 disease and developmental disabilities as defined in section 36-551.

35 5. "Threat to public safety" means charged with the commission of any
36 of the following:

37 (a) A crime involving the discharge, use or threatening exhibition of
38 a deadly weapon or dangerous instrument or the infliction of physical injury
39 on another person.

40 (b) A dangerous crime against children pursuant to section 13-705.

41 (c) Two or more nondangerous felonies within a period of twenty-four
42 months.

1 Sec. 2. Section 13-4503, Arizona Revised Statutes, is amended to read:

2 13-4503. Request for competency examination; request for
3 sexually violent person screening

4 A. At any time after the prosecutor charges a criminal offense by
5 complaint, information or indictment, any party or the court on its own
6 motion may request in writing that the defendant be examined to determine the
7 defendant's competency to stand trial, to enter a plea or to assist the
8 defendant's attorney. The motion shall state the facts on which the mental
9 examination is sought.

10 B. Within three working days after a motion is filed pursuant to this
11 section, the parties shall provide all available medical and criminal history
12 records to the court.

13 C. The court may request that a mental health expert assist the court
14 in determining if reasonable grounds exist for examining a defendant.

15 D. Once any court determines that reasonable grounds exist for further
16 competency proceedings, the superior court shall have exclusive jurisdiction
17 over all competency hearings.

18 E. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
19 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS A SCREENING, THE
20 COURT MAY ORDER A SCREENING OF THE DEFENDANT TO DETERMINE WHETHER THE
21 DEFENDANT IS A SEXUALLY VIOLENT PERSON.

22 Sec. 3. Section 13-4505, Arizona Revised Statutes, is amended to read:

23 13-4505. Appointment of experts; costs; immunity

24 A. If the court determines pursuant to section 13-4503 that reasonable
25 grounds exist for a competency examination, the court shall appoint two or
26 more mental health experts to examine the defendant, issue a report and, if
27 necessary, testify regarding the defendant's competency. The court, on its
28 own motion or ~~upon~~ ON motion of any party, may order that one of the mental
29 health experts appointed ~~shall~~ be a physician specializing in psychiatry and
30 licensed pursuant to title 32, chapter 13 or 17. The state and the
31 defendant, ~~upon~~ ON approval of the court, may stipulate to the appointment of
32 only one expert.

33 B. The court may order the defendant to submit to physical,
34 neurological or psychological examinations, if necessary, to adequately
35 determine the defendant's mental condition.

36 C. IF AN EXPERT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO STAND
37 TRIAL AND NOT RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE MONTHS, THE EXPERT
38 SHALL DETERMINE WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

39 ~~C.~~ D. The court shall order the defendant to pay the costs of the
40 court ordered examination, except that if the court finds the defendant is
41 indigent or otherwise unable to pay all or any part of the costs or if the
42 prosecution requested the examination, the court shall order the county to
43 pay the costs of the examination or, if the case is referred by a municipal
44 court judge, the court shall order the city to pay the costs of the
45 examination.

1 ~~D.~~ E. This section does not prohibit any party from retaining its own
2 expert to conduct any additional examinations at its own expense.

3 ~~E.~~ F. A person who is appointed as a mental health expert or clinical
4 liaison is entitled to immunity, except that the mental health expert or
5 clinical liaison may be liable for intentional, wanton or grossly negligent
6 acts that are done in the performance of the expert's or liaison's duties.

7 Sec. 4. Section 13-4508, Arizona Revised Statutes, is amended to read:

8 13-4508. Privilege against self-incrimination; sealed reports

9 A. The privilege against self-incrimination applies to any examination
10 that is ordered by the court pursuant to this chapter.

11 B. Any evidence or statement that is obtained during an examination is
12 not admissible at any proceeding to determine a defendant's guilt or
13 innocence unless the defendant presents evidence that is intended to rebut
14 the presumption of sanity.

15 C. Any statement made by the defendant during an examination or any
16 evidence resulting from that statement concerning any other event or
17 transaction is not admissible at any proceeding to determine the defendant's
18 guilt or innocence of any other criminal charges that are based on those
19 events or transactions, **EXCEPT THAT A STATEMENT OR EVIDENCE MAY BE USED BY**
20 **ANY PARTY IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS ELIGIBLE FOR**
21 **COURT-ORDERED TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR IS A SEXUALLY**
22 **VIOLENT PERSON.**

23 D. Any statement made by the defendant or any part of the evaluations
24 that is obtained during an examination may not be used for any purpose
25 without the written consent of the defendant or the defendant's guardian or a
26 court order that is entered by the court that ordered the examination or that
27 is conducting a dependency or severance proceeding.

28 E. After a plea of guilty or guilty except insane or the trial or
29 after the defendant is found to be unable to be restored to competence, the
30 court shall order all the reports submitted pursuant to this section sealed.
31 The court may order that the reports be opened only as follows:

32 1. For use by the court or defendant, or by the prosecutor if
33 otherwise permitted by law, for further competency or sanity evaluations **OR**
34 **IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS ELIGIBLE FOR COURT-ORDERED**
35 **TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR IS A SEXUALLY VIOLENT PERSON.**

36 2. For statistical analysis.

37 3. When the records are deemed necessary to assist in mental health
38 treatment pursuant to section 13-502 or 13-4517.

39 4. For use by the probation department or the state department of
40 corrections if the defendant is in the custody of or is scheduled to be
41 transferred into the custody of the state department of corrections for the
42 purposes of assessment and supervision or monitoring of the defendant by that
43 department.

44 5. For use by a mental health treatment provider that provides
45 treatment to the defendant or that assesses the defendant for treatment.

1 6. For data gathering.

2 7. For scientific study.

3 F. Any statement made by the defendant during an examination that is
4 conducted pursuant to this chapter or any evidence resulting from that
5 statement is not subject to disclosure pursuant to section 36-509.

6 Sec. 5. Section 13-4509, Arizona Revised Statutes, is amended to read:
7 13-4509. Expert's report

8 A. An expert who is appointed pursuant to section 13-4505 shall submit
9 a written report of the examination to the court within ten working days
10 after the examination is completed. The report shall include at least the
11 following information:

12 1. The name of each mental health expert who examines the defendant.

13 2. A description of the nature, content, extent and results of the
14 examination and any test conducted.

15 3. The facts on which the findings are based.

16 4. An opinion as to the competency of the defendant.

17 B. If the mental health expert determines that the defendant is
18 incompetent to stand trial, the report shall also include the following
19 information:

20 1. The nature of the mental disease, defect or disability that is the
21 cause of the incompetency.

22 2. The defendant's prognosis.

23 3. THE PERSONALITY OR OTHER DISORDER THAT MAKES THE DEFENDANT LIKELY
24 TO BE A SEXUALLY VIOLENT PERSON.

25 ~~3-~~ 4. The most appropriate form and place of treatment in this state,
26 based on the defendant's therapeutic needs and potential threat to public
27 safety.

28 ~~4-~~ 5. Whether the defendant is incompetent to refuse treatment and
29 should be subject to involuntary treatment.

30 6. IF THE PROGNOSIS INCLUDES A DETERMINATION AS TO WHETHER THERE IS NO
31 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN
32 TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,
33 WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

34 C. If the mental health examiner determines that the defendant is
35 currently competent by virtue of ongoing treatment with psychotropic
36 medication, the report shall address the necessity of continuing that
37 treatment and shall include a description of any limitations that the
38 medication may have on competency.

39 Sec. 6. Section 13-4517, Arizona Revised Statutes, is amended to read:
40 13-4517. Incompetent defendants; disposition

41 A. If the court finds that a defendant is incompetent to stand trial
42 and that there is no substantial probability that the defendant will regain
43 competency within twenty-one months after the date of the original finding of
44 incompetency, any party may request that the court:

1 1. Remand the defendant to the custody of the department of health
2 services for the institution of civil commitment proceedings pursuant to
3 title 36, chapter 5. IF THE DEFENDANT IS REMANDED, THE PROSECUTOR SHALL FILE
4 A PETITION FOR EVALUATION AND PROVIDE ANY KNOWN CRIMINAL HISTORY FOR THE
5 DEFENDANT.

6 2. Appoint a guardian pursuant to title 14, chapter 5.

7 3. Release the defendant from custody and dismiss the charges against
8 the defendant without prejudice.

9 B. IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 1
10 OR 2 OF THIS SECTION, THE COURT MAY ALSO ORDER AN ASSESSMENT OF THE
11 DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE
12 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE
13 AND TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36, CHAPTER 29,
14 STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII SERVICES AND MEDICARE PART
15 D PRESCRIPTION DRUG BENEFITS, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL
16 SECURITY DISABILITY INCOME.

17 C. THE COURT MAY RETAIN JURISDICTION OVER THE DEFENDANT UNTIL THE
18 DEFENDANT IS COMMITTED FOR TREATMENT PURSUANT TO TITLE 36, CHAPTER 5 OR A
19 GUARDIAN IS APPOINTED PURSUANT TO TITLE 14, CHAPTER 5.

20 D. IF THE COURT REMANDS THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT
21 OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS
22 PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT
23 HAS NOT HAD A CIVIL COMMITMENT EVALUATION, THE COURT SHALL ORDER THE SHERIFF
24 TO TAKE THE DEFENDANT INTO CUSTODY SO THAT THE COURT MAY EXPLORE OPTIONS
25 PURSUANT TO SUBSECTION A, PARAGRAPH 2 OR 3 OF THIS SECTION. IF THE DEFENDANT
26 IS OUT OF CUSTODY, THE COURT MAY ORDER THAT THE DEFENDANT BE TAKEN INTO
27 CUSTODY FOR A DISPOSITION PURSUANT TO THIS SECTION.

28 E. IF A MENTAL HEALTH EXPERT HAS DETERMINED THAT THE DEFENDANT MAY BE
29 A SEXUALLY VIOLENT PERSON, THE MENTAL HEALTH EXPERT SHALL PROVIDE THE REPORT
30 TO THE PROSECUTING AGENCY SO THAT THE PROSECUTING AGENCY MAY FILE A PETITION
31 PURSUANT TO SECTION 36-3702.

32 Sec. 7. Section 36-501, Arizona Revised Statutes, is amended to read:

33 36-501. Definitions

34 In this chapter, unless the context otherwise requires:

35 1. "Administration" means the Arizona health care cost containment
36 system administration.

37 2. "Admitting officer" means a psychiatrist or other physician or
38 psychiatric and mental health nurse practitioner with experience in
39 performing psychiatric examinations who has been designated as an admitting
40 officer of the evaluation agency by the person in charge of the evaluation
41 agency.

42 3. "Chief medical officer" means the chief medical officer under the
43 supervision of the superintendent of the state hospital.

44 4. "Contraindicated" means that access is reasonably likely to
45 endanger the life or physical safety of the patient or another person.

1 5. "Court" means the superior court in the county in this state in
2 which the patient resides or was found before screening or emergency
3 admission under this title.

4 6. "CRIMINAL HISTORY" MEANS POLICE REPORTS, LISTS OF PRIOR ARRESTS AND
5 CONVICTIONS, CRIMINAL CASE PLEADINGS AND COURT ORDERS, INCLUDING A
6 DETERMINATION THAT THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL
7 PURSUANT TO SECTION 13-4510.

8 ~~6-~~ 7. "Danger to others" means that the judgment of a person who has
9 a mental disorder is so impaired that the person is unable to understand the
10 person's need for treatment and as a result of the person's mental disorder
11 the person's continued behavior can reasonably be expected, on the basis of
12 competent medical opinion, to result in serious physical harm.

13 ~~7-~~ 8. "Danger to self":

14 (a) Means behavior that, as a result of a mental disorder:

15 (i) Constitutes a danger of inflicting serious physical harm on
16 oneself, including attempted suicide or the serious threat thereof, if the
17 threat is such that, when considered in the light of its context and in light
18 of the individual's previous acts, it is substantially supportive of an
19 expectation that the threat will be carried out.

20 (ii) Without hospitalization will result in serious physical harm or
21 serious illness to the person.

22 (b) Does not include behavior that establishes only the condition of
23 having a grave disability.

24 ~~8-~~ 9. "Department" means the department of health services.

25 ~~9-~~ 10. "Detention" means the taking into custody of a patient or
26 proposed patient.

27 ~~10-~~ 11. "Director" means the director of the administration.

28 ~~11-~~ 12. "Evaluation" means:

29 (a) A professional multidisciplinary analysis that may include
30 firsthand observations or remote observations by interactive audiovisual
31 media and that is based on data describing the person's identity, biography
32 and medical, psychological and social conditions carried out by a group of
33 persons consisting of not less than the following:

34 (i) Two licensed physicians, who shall be qualified psychiatrists, if
35 possible, or at least experienced in psychiatric matters, and who shall
36 examine and report their findings independently. The person against whom a
37 petition has been filed shall be notified that the person may select one of
38 the physicians. A psychiatric resident in a training program approved by the
39 American medical association or by the American osteopathic association may
40 examine the person in place of one of the psychiatrists if the resident is
41 supervised in the examination and preparation of the affidavit and testimony
42 in court by a qualified psychiatrist appointed to assist in the resident's
43 training, and if the supervising psychiatrist is available for discussion
44 with the attorneys for all parties and for court appearance and testimony if
45 requested by the court or any of the attorneys.

1 (ii) Two other individuals, one of whom, if available, shall be a
2 psychologist and in any event a social worker familiar with mental health and
3 human services that may be available placement alternatives appropriate for
4 treatment. An evaluation may be conducted on an inpatient basis, an
5 outpatient basis or a combination of both, and every reasonable attempt shall
6 be made to conduct the evaluation in any language preferred by the person.

7 (b) A physical examination that is consistent with the existing
8 standards of care and that is performed by one of the evaluating physicians
9 or by or under the supervision of a physician who is licensed pursuant to
10 title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed
11 pursuant to title 32, chapter 15 if the results of that examination are
12 reviewed or augmented by one of the evaluating physicians.

13 ~~12.~~ 13. "Evaluation agency" means a health care agency that is
14 licensed by the department and that has been approved pursuant to this title,
15 providing those services required of such agency by this chapter.

16 ~~13.~~ 14. "Family member" means a spouse, parent, adult child, adult
17 sibling or other blood relative of a person undergoing treatment or
18 evaluation pursuant to this chapter.

19 ~~14.~~ 15. "Grave disability" means a condition evidenced by behavior in
20 which a person, as a result of a mental disorder, is likely to come to
21 serious physical harm or serious illness because the person is unable to
22 provide for the person's own basic physical needs.

23 ~~15.~~ 16. "Health care decision maker" has the same meaning prescribed
24 in section 12-2801.

25 ~~16.~~ 17. "Health care entity" means a health care provider, the
26 department, the administration or a regional behavioral health authority
27 under contract with the administration.

28 ~~17.~~ 18. "Health care provider" means a health care institution as
29 defined in section 36-401 that is licensed as a behavioral health provider
30 pursuant to department rules or a mental health provider.

31 ~~18.~~ 19. "Independent evaluator" means a licensed physician,
32 psychiatric and mental health nurse practitioner or psychologist selected by
33 the person to be evaluated or by such person's attorney.

34 ~~19.~~ 20. "Informed consent" means a voluntary decision following
35 presentation of all facts necessary to form the basis of an intelligent
36 consent by the patient or guardian with no minimizing of known dangers of any
37 procedures.

38 ~~20.~~ 21. "Least restrictive treatment alternative" means the treatment
39 plan and setting that infringe in the least possible degree with the
40 patient's right to liberty and that are consistent with providing needed
41 treatment in a safe and humane manner.

42 ~~21.~~ 22. "Licensed physician" means any medical doctor or doctor of
43 osteopathy who is either:

44 (a) Licensed in this state.

1 (b) A full-time hospital physician licensed in another state and
2 serving on the staff of a hospital operated or licensed by the United States
3 government.

4 ~~22.~~ 23. "Medical director of an evaluation agency" means a
5 psychiatrist, or other licensed physician experienced in psychiatric matters,
6 who is designated in writing by the governing body of the agency as the
7 person in charge of the medical services of the agency for the purposes of
8 this chapter and may include the chief medical officer of the state hospital.

9 ~~23.~~ 24. "Medical director of a mental health treatment agency" means
10 a psychiatrist, or other licensed physician experienced in psychiatric
11 matters, who is designated in writing by the governing body of the agency as
12 the person in charge of the medical services of the agency for the purposes
13 of this chapter and includes the chief medical officer of the state hospital.

14 ~~24.~~ 25. "Mental disorder" means a substantial disorder of the
15 person's emotional processes, thought, cognition or memory. Mental disorder
16 is distinguished from:

17 (a) Conditions that are primarily those of drug abuse, alcoholism or
18 intellectual disability, unless, in addition to one or more of these
19 conditions, the person has a mental disorder.

20 (b) The declining mental abilities that directly accompany impending
21 death.

22 (c) Character and personality disorders characterized by lifelong and
23 deeply ingrained antisocial behavior patterns, including sexual behaviors
24 that are abnormal and prohibited by statute unless the behavior results from
25 a mental disorder.

26 ~~25.~~ 26. "Mental health provider" means any physician or provider of
27 mental health or behavioral health services involved in evaluating, caring
28 for, treating or rehabilitating a patient.

29 ~~26.~~ 27. "Mental health treatment agency" means the state hospital or
30 a health care agency that is licensed by the department and that provides
31 those services that are required of the agency by this chapter.

32 ~~27.~~ 28. "Outpatient treatment" or "combined inpatient and outpatient
33 treatment" means any treatment program not requiring continuous inpatient
34 hospitalization.

35 ~~28.~~ 29. "Outpatient treatment plan" means a treatment plan that does
36 not require continuous inpatient hospitalization.

37 ~~29.~~ 30. "Patient" means any person undergoing examination, evaluation
38 or behavioral or mental health treatment under this chapter.

39 ~~30.~~ 31. "Peace officers" means sheriffs of counties, constables,
40 marshals and policemen of cities and towns.

41 ~~31.~~ 32. "Persistent or acute disability" means a severe mental
42 disorder that meets all the following criteria:

43 (a) If not treated has a substantial probability of causing the person
44 to suffer or continue to suffer severe and abnormal mental, emotional or

1 physical harm that significantly impairs judgment, reason, behavior or
2 capacity to recognize reality.

3 (b) Substantially impairs the person's capacity to make an informed
4 decision regarding treatment, and this impairment causes the person to be
5 incapable of understanding and expressing an understanding of the advantages
6 and disadvantages of accepting treatment and understanding and expressing an
7 understanding of the alternatives to the particular treatment offered after
8 the advantages, disadvantages and alternatives are explained to that person.

9 (c) Has a reasonable prospect of being treatable by outpatient,
10 inpatient or combined inpatient and outpatient treatment.

11 ~~32.~~ 33. "Prepetition screening" means the review of each application
12 requesting court-ordered evaluation, including an investigation of facts
13 alleged in such application, an interview with each applicant and an
14 interview, if possible, with the proposed patient. The purpose of the
15 interview with the proposed patient is to assess the problem, explain the
16 application and, when indicated, attempt to persuade the proposed patient to
17 receive, on a voluntary basis, evaluation or other services.

18 ~~33.~~ 34. "Prescribed form" means a form established by a court or the
19 rules of the administration in accordance with the laws of this state.

20 ~~34.~~ 35. "Professional" means a physician who is licensed pursuant to
21 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title
22 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is
23 certified pursuant to title 32, chapter 15.

24 ~~35.~~ 36. "Proposed patient" means a person for whom an application for
25 evaluation has been made or a petition for court-ordered evaluation has been
26 filed.

27 37. "PROSECUTING AGENCY" MEANS THE COUNTY ATTORNEY, ATTORNEY GENERAL
28 OR CITY ATTORNEY WHO APPLIED OR PETITIONED FOR AN EVALUATION OR TREATMENT
29 PURSUANT TO THIS CHAPTER.

30 ~~36.~~ 38. "Psychiatric and mental health nurse practitioner" means a
31 registered nurse practitioner as defined in section 32-1601 who has completed
32 an adult or family psychiatric and mental health nurse practitioner program
33 and who is certified as an adult or family psychiatric and mental health
34 nurse practitioner by the state board of nursing.

35 ~~37.~~ 39. "Psychiatrist" means a licensed physician who has completed
36 three years of graduate training in psychiatry in a program approved by the
37 American medical association or the American osteopathic association.

38 ~~38.~~ 40. "Psychologist" means a person who is licensed under title 32,
39 chapter 19.1 and who is experienced in the practice of clinical psychology.

40 ~~39.~~ 41. "Records" means all communications that are recorded in any
41 form or medium and that relate to patient examination, evaluation or
42 behavioral or mental health treatment. Records include medical records that
43 are prepared by a health care provider or other providers. Records do not
44 include:

1 (a) Materials that are prepared in connection with utilization review,
2 peer review or quality assurance activities, including records that a health
3 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or
4 36-2917.

5 (b) Recorded telephone and radio calls to and from a publicly operated
6 emergency dispatch office relating to requests for emergency services or
7 reports of suspected criminal activity.

8 ~~40.~~ 42. "Regional behavioral health authority" has the same meaning
9 prescribed in section 36-3401.

10 ~~41.~~ 43. "Screening agency" means a health care agency that is
11 licensed by the department and that provides those services required of such
12 agency by this chapter.

13 ~~42.~~ 44. "Social worker" means a person who has completed two years of
14 graduate training in social work in a program approved by the council of
15 social work education and who has experience in mental health.

16 ~~43.~~ 45. "State hospital" means the Arizona state hospital.

17 ~~44.~~ 46. "Superintendent" means the superintendent of the state
18 hospital.

19 Sec. 8. Section 36-521, Arizona Revised Statutes, is amended to read:

20 ~~36-521.~~ Preparation of petition for court-ordered evaluation;
21 procedures for prepetition screening

22 A. On receiving the application for evaluation, the screening agency,
23 before filing a petition for court-ordered evaluation, shall provide
24 prepetition screening within forty-eight hours excluding weekends and
25 holidays when possible to determine whether there is reasonable cause to
26 believe the allegations of the applicant for the court-ordered evaluation,
27 whether the person will voluntarily receive evaluation at a scheduled time
28 and place and whether the person has a persistent or acute disability or a
29 grave disability or is likely to present a danger to self or others until the
30 voluntary evaluation.

31 B. After prepetition screening has been completed, the screening
32 agency shall prepare a report of opinions and conclusions. If prepetition
33 screening is not possible, the screening agency shall prepare a report giving
34 reasons why the screening was not possible and including opinions and
35 conclusions of staff members who attempted to conduct prepetition screening
36 or otherwise investigated the matter.

37 C. If the prepetition screening report indicates that there exists no
38 reasonable cause to believe the allegations of the applicant for the
39 court-ordered evaluation, it shall be reviewed by the medical director of the
40 screening agency or the medical director's designee.

41 D. If, based on the allegations of the applicant for the court-ordered
42 evaluation and the prepetition screening report or other information obtained
43 while attempting to conduct a prepetition screening, the agency determines
44 that there is reasonable cause to believe that the proposed patient is, as a
45 result of mental disorder, a danger to self or to others or has a persistent

1 or acute disability or a grave disability and that the proposed patient is
2 unable or unwilling to voluntarily receive evaluation or is likely to present
3 a danger to self or to others, has a grave disability or will further
4 deteriorate before receiving a voluntary evaluation, the agency shall prepare
5 a petition for court-ordered evaluation and shall file the petition, which
6 shall be signed by the person who prepared the petition unless the county
7 attorney performs these functions. If the agency determines that there is
8 reasonable cause to believe that the person is in such a condition that
9 without immediate hospitalization he is likely to harm himself or others, the
10 agency shall take all reasonable steps to procure such hospitalization on an
11 emergency basis.

12 E. The agency may contact the county attorney in order to obtain
13 assistance in preparing the petition for court-ordered evaluation, and the
14 agency may request the advice and judgment of the county attorney in reaching
15 a decision as to whether the court-ordered evaluation is justified.

16 F. The county attorney may prepare or sign or file the petition if a
17 court has ordered the county attorney to prepare the petition.

18 G. If a petition for court-ordered evaluation alleges danger to others
19 as described in section 36-501, the screening agency, before filing such a
20 petition, shall contact the county attorney for a review of the petition.
21 The county attorney shall examine the petition and make one of the following
22 written recommendations:

23 1. That a criminal investigation is warranted.

24 2. That the screening agency shall file the petition.

25 3. That no further proceedings are warranted. The screening agency
26 shall consider the recommendation in determining whether a court-ordered
27 evaluation is justified and shall include the recommendation with the
28 petition if the agency decides to file the petition with the court.

29 H. The petition shall be made in the form and manner prescribed by the
30 director.

31 I. IF A PETITION FOR COURT-ORDERED EVALUATION IS FILED BY A PROSECUTOR
32 PURSUANT TO SECTION 13-4517, A PRIOR APPLICATION FOR COURT-ORDERED EVALUATION
33 OR PRESCREENING IS NOT NECESSARY.

34 Sec. 9. Section 36-523, Arizona Revised Statutes, is amended to read:

35 36-523. Petition for evaluation

36 A. The petition for evaluation shall contain the following:

37 1. The name, address and interest in the case of the individual who
38 applied for the petition.

39 2. The name, and address if known, of the proposed patient for whom
40 evaluation is petitioned.

41 3. The present whereabouts of the proposed patient, if known.

42 4. A statement alleging that there is reasonable cause to believe that
43 the proposed patient has a mental disorder and is as a result a danger to
44 self or others, has a persistent or acute disability or a grave disability
45 and is unwilling or unable to undergo voluntary evaluation.

1 5. A summary of the facts that support the allegations that the
2 proposed patient is dangerous, has a persistent or acute disability or a
3 grave disability and is unwilling or unable to be voluntarily evaluated,
4 including the facts that brought the proposed patient to the screening
5 agency's attention.

6 6. IF THE PETITION IS FILED BY A PROSECUTOR PURSUANT TO SECTION
7 13-4517, THE PETITION SHALL INCLUDE ANY KNOWN CRIMINAL HISTORY OF THE
8 PROPOSED PATIENT, INCLUDING WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND
9 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510.

10 ~~6-~~ 7. Other information that the director by rule or the court by
11 rule or order may require.

12 B. The petition shall request that the court issue an order requiring
13 that the proposed patient be given an evaluation and shall advise the court
14 of both of the following:

15 1. That the opinion of the petitioner is either that the proposed
16 patient is or is not in such a condition that without immediate or continuing
17 hospitalization the patient is likely to suffer serious physical harm or
18 further deterioration or inflict serious physical harm on another person.

19 2. If the opinion of the petitioner is that the proposed patient is
20 not in the condition described in paragraph 1 of this subsection, that the
21 opinion of the petitioner is either that the evaluation should or should not
22 take place on an outpatient basis.

23 C. The petition for evaluation shall be accompanied by the application
24 for evaluation, by the recommendation of the county attorney pursuant to
25 section 36-521 and by a prepetition screening report, unless the documents
26 have not been prepared under a provision of law or in accordance with an
27 order of the court. The petition for evaluation shall also be accompanied by
28 a copy of the application for emergency admission if one exists.

29 D. A petition and other forms required in a court may be filed only by
30 the screening agency that has prepared the petition.

31 E. If the petition is not filed because it has been determined that
32 the person does not need an evaluation, the agency after a period of six
33 months shall destroy the petition and the various reports annexed to the
34 petition as required by this section.

35 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
36 THE PERSON DOES NOT NEED AN EVALUATION AND A PROSECUTOR FILED A PETITION
37 PURSUANT TO SECTION 13-4517, THE PERSON SHALL BE REMANDED FOR A DISPOSITION
38 PURSUANT TO SECTION 13-4517. IF THE PERSON IS OUT OF CUSTODY, THE COURT MAY
39 ORDER THAT THE PERSON BE TAKEN INTO CUSTODY FOR A DISPOSITION PURSUANT TO
40 THIS SECTION.

41 G. IF THE PERSON IS THE SUBJECT OF A PETITION FILED BY A PROSECUTOR
42 PURSUANT TO SECTION 13-4517, AN EVALUATION SHALL BE COMPLETED WITHIN
43 SEVENTY-TWO HOURS AFTER THE PERSON IS DELIVERED TO THE EVALUATION AGENCY.

1 Sec. 10. Section 36-529, Arizona Revised Statutes, is amended to read:

2 36-529. Order for evaluation; order for detention; hearing

3 A. If, from the review of the petition for evaluation, the court does
4 not determine that the proposed patient is likely to present a danger to self
5 or others or further deteriorate ~~prior to his~~ BEFORE THE PROPOSED PATIENT'S
6 hearing on court-ordered treatment, but determines that there is reasonable
7 cause to believe that the proposed patient is, as a result of a mental
8 disorder, a danger to self or others, ~~OR~~ has a persistent or acute
9 disability or a grave disability, the court shall issue an order directing
10 the proposed patient to submit to an evaluation at a designated time and
11 place, specifying that the evaluation will take place on an inpatient or an
12 outpatient basis. The court may also order that, if the person does not or
13 cannot so submit, ~~that he~~ THE PERSON be taken into custody by a ~~police~~ PEACE
14 officer and delivered to an evaluation agency. If the court makes such a
15 conditional order, it shall also make a conditional appointment of counsel
16 for the person to become effective when and if the person is taken into
17 custody pursuant to this section.

18 B. If, from review of the petition for evaluation, there is reasonable
19 cause to believe that the proposed patient is, as a result of a mental
20 disorder, a danger to self or others, ~~OR~~ has a persistent or acute
21 disability or a grave disability and that the person requires immediate or
22 continued hospitalization ~~prior to his~~ BEFORE THE PROPOSED PATIENT'S hearing
23 on court-ordered treatment, the court shall order the proposed patient taken
24 into custody and evaluated at an evaluation agency. The court shall promptly
25 appoint counsel for the proposed patient. If an intercounty agreement
26 authorizes the same, the court may order that the evaluation be conducted in
27 another county, and the superior court in the county where the evaluation is
28 conducted shall have concurrent jurisdiction to make appropriate orders
29 concerning the proposed patient.

30 C. If the person is not taken into custody or if the evaluation
31 pursuant to the order of the court under subsection A or B OF THIS SECTION is
32 not initiated within fourteen days from the date of the order, the order and
33 petition for evaluation shall expire. IF A PROSECUTOR FILED A PETITION
34 PURSUANT TO SECTION 13-4517, THE COURT AND THE PROSECUTING AGENCY SHALL
35 RECEIVE NOTICE OF THE EXPIRATION OF THE ORDER FOR EVALUATION. THE COURT MAY
36 ENTER ANY ORDERS NECESSARY FOR FURTHER DISPOSITION PURSUANT TO SECTION
37 13-4517, INCLUDING A PICKUP ORDER DIRECTING THAT THE PERSON BE TAKEN INTO
38 CUSTODY. THIS SUBSECTION DOES NOT PREVENT ANY PERSON FROM INITIATING ANOTHER
39 COURT-ORDERED EVALUATION OF THE PERSON PURSUANT TO THIS CHAPTER.

40 D. If the person is involuntarily hospitalized, the person shall be
41 informed by ~~his~~ THE PERSON'S appointed attorney of ~~his rights~~ THE RIGHT to a
42 hearing to determine whether ~~he~~ THE PERSON should be involuntarily
43 hospitalized for evaluation and to be represented at the hearing by an
44 attorney. If the ~~patient~~ PERSON requests a hearing to determine whether ~~he~~

1 THE PERSON should be involuntarily hospitalized during evaluation, the court
2 shall schedule a hearing at its first opportunity.

3 Sec. 11. Section 36-531, Arizona Revised Statutes, is amended to read:

4 36-531. Evaluation; possible dispositions; release

5 A. A person who is being evaluated on an inpatient basis in an
6 evaluation agency shall be released if, in the opinion of the medical
7 director of the agency, further evaluation is not appropriate unless the
8 person applies for further care and treatment on a voluntary basis.

9 B. If it is determined on an evaluation of the patient's condition
10 that the patient is, as a result of a mental disorder, a danger to self or to
11 others or has a persistent or acute disability or a grave disability, the
12 medical director in charge of the agency that provided the evaluation, unless
13 the person applies for further care and treatment on a voluntary basis, shall
14 prepare, sign and file a petition for court-ordered treatment unless the
15 county attorney performs the functions of preparing, signing or filing the
16 petition as provided in subsection C of this section.

17 C. The agency may contact the county attorney to obtain assistance in
18 preparing the petition for court-ordered treatment, and the agency may
19 request the advice and judgment of the county attorney in reaching a decision
20 as to whether court-ordered treatment is justified.

21 D. A person being evaluated on an inpatient basis in an evaluation
22 agency shall be released within seventy-two hours, excluding weekends and
23 holidays, from the time that the person is hospitalized pursuant to a court
24 order for evaluation, unless the person applies for further care and
25 treatment on a voluntary basis or unless a petition for court-ordered
26 treatment has been filed pursuant to subsection B of this section.

27 E. IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE
28 MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE NOTICE WITHIN
29 TWENTY-FOUR HOURS TO THE COURT AND THE PROSECUTING AGENCY OF THE MEDICAL
30 DIRECTOR'S INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. THE COURT MAY
31 ORDER THE PERSON RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION
32 13-4517. AT ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL
33 ORDER THE MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING
34 MEDICAL AND TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

35 ~~E.~~ F. The administration may conduct jointly with a school district,
36 directly or indirectly, an educational evaluation pursuant to sections 15-765
37 and 15-766 for nonadjudicated youth. The evaluation information may be
38 shared by and among authorized personnel employed by the administration and
39 the department of education, or authorized personnel from the local education
40 agency, for purposes of ensuring the provision of special education and
41 related services as required by the individuals with disabilities education
42 act (20 United States Code sections 1400 through 1415).

1 Sec. 12. Section 36-533, Arizona Revised Statutes, is amended to read:

2 36-533. Petition for treatment

3 A. The petition for court-ordered treatment shall allege:

4 1. That the patient is in need of a period of treatment because the
5 patient, as a result of mental disorder, is a danger to self or to others,~~—~~
6 OR has a persistent or acute disability or a grave disability.

7 2. The treatment alternatives that are appropriate or available.

8 3. That the patient is unwilling to accept or incapable of accepting
9 treatment voluntarily.

10 B. The petition shall be accompanied by the affidavits of the two
11 physicians who participated in the evaluation and by the affidavit of the
12 applicant for the evaluation, if any. The affidavits of the physicians shall
13 describe in detail the behavior that indicates that the person, as a result
14 of mental disorder, is a danger to self or to others,~~—~~ OR has a persistent or
15 acute disability or a grave disability and shall be based on the physician's
16 observations of the patient and the physician's study of information about
17 the patient. A summary of the facts that support the allegations of the
18 petition shall be included. The affidavit shall also include any of the
19 results of the physical examination of the patient if relevant to the
20 patient's psychiatric condition.

21 C. The petition shall request the court to issue an order requiring
22 the person to undergo a period of treatment. IF PROVIDED BY THE PROSECUTOR
23 PURSUANT TO SECTION 13-4517 THE PETITION SHALL SET FORTH ANY KNOWN CRIMINAL
24 HISTORY OF THE PERSON.

25 D. In cases of grave disability, the petition shall also include:

26 1. A statement that in the opinion of the petitioner the person with a
27 grave disability does or does not require guardianship or conservatorship, or
28 both, under title 14 and the reasons on which the statement is based.

29 2. A request that the court order an independent investigation and
30 report for the court if in the opinion of the petitioner the person does
31 require guardianship or conservatorship, or both.

32 3. A statement that in the opinion of the petitioner the person with a
33 grave disability does or does not require temporary guardianship or
34 conservatorship, or both, and the reasons on which the statement is based.

35 4. A request that the court appoint a temporary guardian or
36 conservator, or both, if in the opinion of the petitioner the person does
37 require temporary guardianship or conservatorship, or both.

38 E. A copy of the petition in cases of grave disability shall be mailed
39 to the public fiduciary in the county of the patient's residence or in which
40 the patient was found before evaluation and to any person nominated as
41 guardian or conservator.

42 F. A copy of all petitions shall be mailed to the superintendent of
43 the Arizona state hospital.

1 Sec. 13. Section 36-534, Arizona Revised Statutes, is amended to read:

2 36-534. Change to voluntary status; discharge; notice; hearing

3 A. If, after a petition for court-ordered treatment has been filed and
4 prior to the hearing, the medical director of the EVALUATION agency finds
5 that it is more appropriate to discharge the patient or to admit the proposed
6 patient on a voluntary basis, the medical director ~~shall~~, after receiving
7 approval from the court, SHALL either discharge the patient or admit the
8 patient for further treatment on a voluntary basis.

9 B. IF THE COURT APPROVES ADMITTING A PATIENT FOR WHOM A PETITION HAS
10 BEEN FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 TO VOLUNTARY TREATMENT
11 OR BEFORE A PATIENT IS DISCHARGED PURSUANT TO THIS SECTION, THE MEDICAL
12 DIRECTOR SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY. THE PROSECUTING
13 AGENCY MAY REQUEST A HEARING TO DETERMINE WHETHER THE COURT SHOULD ORDER THE
14 DEFENDANT RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517.
15 FOR ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
16 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
17 TREATMENT RECORDS, TO THE COURT AND TO THE PROSECUTING AGENCY.

18 Sec. 14. Section 36-540, Arizona Revised Statutes, is amended to read:

19 36-540. Court options

20 A. If the court finds by clear and convincing evidence that the
21 proposed patient, as a result of mental disorder, is a danger to self, is a
22 danger to others, has a persistent or acute disability or a grave disability
23 and IS in need of treatment, and is either unwilling or unable to accept
24 voluntary treatment, the court shall order the patient to undergo one of the
25 following:

26 1. Treatment in a program of outpatient treatment.

27 2. Treatment in a program consisting of combined inpatient and
28 outpatient treatment.

29 3. Inpatient treatment in a mental health treatment agency, in a
30 hospital operated by or under contract with the United States department of
31 veterans affairs to provide treatment to eligible veterans pursuant to
32 article 9 of this chapter, in the state hospital or in a private hospital, if
33 the private hospital agrees, subject to the limitations of section 36-541.

34 B. The court shall consider all available and appropriate alternatives
35 for the treatment and care of the patient. The court shall order the least
36 restrictive treatment alternative available.

37 C. The court may order the proposed patient to undergo outpatient or
38 combined inpatient and outpatient treatment pursuant to subsection A,
39 paragraph 1 or 2 of this section if the court:

40 1. Determines that all of the following apply:

41 (a) The patient does not require continuous inpatient hospitalization.

42 (b) The patient will be more appropriately treated in an outpatient
43 treatment program or in a combined inpatient and outpatient treatment
44 program.

45 (c) The patient will follow a prescribed outpatient treatment plan.

1 (d) The patient will not likely become dangerous or suffer more
2 serious physical harm or serious illness or further deterioration if the
3 patient follows a prescribed outpatient treatment plan.

4 2. Is presented with and approves a written treatment plan that
5 conforms with the requirements of section 36-540.01, subsection B. If the
6 treatment plan presented to the court pursuant to this subsection provides
7 for supervision of the patient under court order by a mental health agency
8 that is other than the mental health agency that petitioned or requested the
9 county attorney to petition the court for treatment pursuant to section
10 36-531, the treatment plan must be approved by the medical director of the
11 mental health agency that will supervise the treatment pursuant to subsection
12 E of this section.

13 D. An order to receive treatment pursuant to subsection A, paragraph 1
14 or 2 of this section shall not exceed three hundred sixty-five days. The
15 period of inpatient treatment under a combined treatment order pursuant to
16 subsection A, paragraph 2 of this section shall not exceed the maximum period
17 allowed for an order for inpatient treatment pursuant to subsection F of this
18 section.

19 E. If the court enters an order for treatment pursuant to subsection
20 A, paragraph 1 or 2 of this section, all of the following apply:

21 1. The court shall designate the medical director of the mental health
22 treatment agency that will supervise and administer the patient's treatment
23 program.

24 2. The medical director shall not use the services of any person,
25 agency or organization to supervise a patient's outpatient treatment program
26 unless the person, agency or organization has agreed to provide these
27 services in the individual patient's case and unless the department has
28 determined that the person, agency or organization is capable and competent
29 to do so.

30 3. The person, agency or organization assigned to supervise an
31 outpatient treatment program or the outpatient portion of a combined
32 treatment program shall be notified at least three days before a referral.
33 The medical director making the referral and the person, agency or
34 organization assigned to supervise the treatment program shall share relevant
35 information about the patient to provide continuity of treatment.

36 4. THE COURT MAY ORDER THE MEDICAL DIRECTOR TO PROVIDE NOTICE TO THE
37 COURT OF ANY NONCOMPLIANCE WITH THE TERMS OF A TREATMENT ORDER.

38 ~~4.~~ 5. During any period of outpatient treatment under subsection A,
39 paragraph 2 of this section, if the court, ~~ON ITS OWN MOTION OR~~ on motion by
40 the medical director of the patient's outpatient mental health treatment
41 facility, determines that the patient is not complying with the terms of the
42 order or that the outpatient treatment plan is no longer appropriate and the
43 patient needs inpatient treatment, the court, without a hearing and based on
44 the court record, the patient's medical record, the affidavits and
45 recommendations of the medical director, and the advice of staff and

1 physicians or the psychiatric and mental health nurse practitioner familiar
2 with the treatment of the patient, may enter an order amending its original
3 order. The amended order may alter the outpatient treatment plan or order
4 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
5 this section. The amended order shall not increase the total period of
6 commitment originally ordered by the court or, when added to the period of
7 inpatient treatment provided by the original order and any other amended
8 orders, exceed the maximum period allowed for an order for inpatient
9 treatment pursuant to subsection F of this section. If the patient refuses
10 to comply with an amended order for inpatient treatment, the court, **ON ITS**
11 **OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR**, may authorize and
12 direct a peace officer, ~~on the request of the medical director~~, to take the
13 patient into protective custody and transport the patient to the agency for
14 inpatient treatment. **ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE**
15 **OFFICER TO TAKE THE PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE**
16 **PATIENT'S CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE**
17 **PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER,**
18 **AS APPLICABLE.** When reporting to or being returned to a treatment agency for
19 inpatient treatment pursuant to an amended order, the patient shall be
20 informed of the patient's right to judicial review and the patient's right to
21 consult with counsel pursuant to section 36-546.

22 ~~5-~~ 6. During any period of outpatient treatment under subsection A,
23 paragraph 2 of this section, if the medical director of the outpatient
24 treatment facility in charge of the patient's care determines, in concert
25 with the medical director of an inpatient mental health treatment facility
26 who has agreed to accept the patient, that the patient is in need of
27 immediate acute inpatient psychiatric care because of behavior that is
28 dangerous to self or to others, the medical director of the outpatient
29 treatment facility may order a peace officer to apprehend and transport the
30 patient to the inpatient treatment facility pending a court determination on
31 an amended order under paragraph ~~4-~~ 5 of this subsection. The patient may be
32 detained and treated at the inpatient treatment facility for a period of no
33 more than forty-eight hours, exclusive of weekends and holidays, from the
34 time that the patient is taken to the inpatient treatment facility. The
35 medical director of the outpatient treatment facility shall file the motion
36 for an amended court order requesting inpatient treatment no later than the
37 next working day following the patient being taken to the inpatient treatment
38 facility. Any period of detention within the inpatient treatment facility
39 pending issuance of an amended order shall not increase the total period of
40 commitment originally ordered by the court or, when added to the period of
41 inpatient treatment provided by the original order and any other amended
42 orders, exceed the maximum period allowed for an order for inpatient
43 treatment pursuant to subsection F of this section. If a patient is ordered
44 to undergo inpatient treatment pursuant to an amended order, the medical
45 director of the outpatient treatment facility shall inform the patient of the

1 patient's right to judicial review and to consult with an attorney pursuant
2 to section 36-546.

3 F. The maximum periods of inpatient treatment that the court may
4 order, subject to the limitations of section 36-541, are as follows:

5 1. Ninety days for a person found to be a danger to self.

6 2. One hundred eighty days for a person found to be a danger to
7 others.

8 3. One hundred eighty days for a person found to have a persistent or
9 acute disability.

10 4. Three hundred sixty-five days for a person found to have a grave
11 disability.

12 G. If, on finding that the patient meets the criteria for
13 court-ordered treatment pursuant to subsection A of this section, the court
14 also finds that there is reasonable cause to believe that the patient is an
15 incapacitated person as defined in section 14-5101 or is a person in need of
16 protection pursuant to section 14-5401 and that the patient is or may be in
17 need of guardianship or conservatorship, or both, the court may order an
18 investigation concerning the need for a guardian or conservator, or both, and
19 may appoint a suitable person or agency to conduct the investigation. The
20 appointee may include a court appointed guardian ad litem, an investigator
21 appointed pursuant to section 14-5308 or the public fiduciary if there is no
22 person willing and qualified to act in that capacity. The court shall give
23 notice of the appointment to the appointee within three days of the
24 appointment. The appointee shall submit the report of the investigation to
25 the court within twenty-one days. The report shall include recommendations
26 as to who should be guardian or who should be conservator, or both, and a
27 report of the findings and reasons for the recommendation. If the
28 investigation and report so indicate, the court shall order the appropriate
29 person to submit a petition to become the guardian or conservator, or both,
30 of the patient.

31 H. In any proceeding for court-ordered treatment in which the petition
32 alleges that the patient is in need of a guardian or conservator and states
33 the grounds for that allegation, the court may appoint an emergency temporary
34 guardian or conservator, or both, for a specific purpose or purposes
35 identified in its order and for a specific period of time not to exceed
36 thirty days if the court finds that all of the following are true:

37 1. The patient meets the criteria for court-ordered treatment pursuant
38 to subsection A of this section.

39 2. There is reasonable cause to believe that the patient is an
40 incapacitated person as defined in section 14-5101 or is in need of
41 protection pursuant to section 14-5401, paragraph 2.

42 3. The patient does not have a guardian or conservator and the welfare
43 of the patient requires immediate action to protect the patient or the ward's
44 property.

1 4. The conditions prescribed pursuant to section 14-5310, subsection B
2 or section 14-5401.01, subsection B have been met.

3 I. The court may appoint as a temporary guardian or conservator
4 pursuant to subsection H of this section a suitable person or the public
5 fiduciary if there is no person qualified and willing to act in that
6 capacity. The court shall issue an order for an investigation as prescribed
7 pursuant to subsection G of this section and, unless the patient is
8 represented by independent counsel, the court shall appoint an attorney to
9 represent the patient in further proceedings regarding the appointment of a
10 guardian or conservator. The court shall schedule a further hearing within
11 fourteen days on the appropriate court calendar of a court that has authority
12 over guardianship or conservatorship matters pursuant to this title to
13 consider the continued need for an emergency temporary guardian or
14 conservator and the appropriateness of the temporary guardian or conservator
15 appointed, and shall order the appointed guardian or conservator to give
16 notice to persons entitled to notice pursuant to section 14-5309, subsection
17 A or section 14-5405, subsection A. The court shall authorize certified
18 letters of temporary emergency guardianship or conservatorship to be issued
19 on presentation of a copy of the court's order. If a temporary emergency
20 conservator other than the public fiduciary is appointed pursuant to this
21 subsection, the court shall order that the use of the money and property of
22 the patient by the conservator is restricted and not to be sold, used,
23 transferred or encumbered, except that the court may authorize the
24 conservator to use money or property of the patient specifically identified
25 as needed to pay an expense to provide for the care, treatment or welfare of
26 the patient pending further hearing. This subsection and subsection H of
27 this section do not:

28 1. Prevent the evaluation or treatment agency from seeking
29 guardianship and conservatorship in any other manner allowed by law at any
30 time during the period of court-ordered evaluation and treatment.

31 2. Relieve the evaluation or treatment agency from its obligations
32 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
33 chapter 4.

34 J. If, on finding that a patient meets the criteria for court-ordered
35 treatment pursuant to subsection A of this section, the court also learns
36 that the patient has a guardian appointed under title 14, the court with
37 notice may impose on the existing guardian additional duties pursuant to
38 section 14-5312.01. If the court imposes additional duties on an existing
39 guardian as prescribed in this subsection, the court may determine that the
40 patient needs to continue treatment under a court order for treatment and may
41 issue the order or determine that the patient's needs can be adequately met
42 by the guardian with the additional duties pursuant to section 14-5312.01 and
43 decline to issue the court order for treatment. If at any time after the
44 issuance of a court order for treatment the court finds that the patient's
45 needs can be adequately met by the guardian with the additional duties

1 pursuant to section 14-5312.01 and that a court order for treatment is no
2 longer necessary to assure compliance with necessary treatment, the court may
3 terminate the court order for treatment. If there is a court order for
4 treatment and a guardianship with additional mental health authority pursuant
5 to section 14-5312.01 existing at the same time, the treatment and placement
6 decisions made by the treatment agency assigned by the court to supervise and
7 administer the patient's treatment program pursuant to the court order for
8 treatment are controlling unless the court orders otherwise.

9 K. The court shall file a report as part of the court record on its
10 findings of alternatives for treatment.

11 L. Treatment shall not include psychosurgery, lobotomy or any other
12 brain surgery without specific informed consent of the patient or the
13 patient's legal guardian and an order of the superior court in the county in
14 which the treatment is proposed, approving with specificity the use of the
15 treatment.

16 M. The medical director or any person, agency or organization used by
17 the medical director to supervise the terms of an outpatient treatment plan
18 is not civilly liable for any acts committed by a patient while on outpatient
19 treatment if the medical director, person, agency or organization has in good
20 faith followed the requirements of this section.

21 N. A peace officer who in good faith apprehends and transports a
22 patient to an inpatient treatment facility on the order of the medical
23 director of the outpatient treatment facility pursuant to subsection E,
24 paragraph ~~5~~ 6 of this section is not subject to civil liability.

25 O. If a person has been found, as a result of a mental disorder, to
26 constitute a danger to self or others or to have a persistent or acute
27 disability or a grave disability and the court enters an order for treatment
28 pursuant to subsection A of this section, the court shall transmit the
29 person's name, sex, date of birth, social security number, if available, and
30 date of the order for treatment to the supreme court. The supreme court
31 shall transmit the information to the department of public safety to comply
32 with the requirements of title 13, chapter 31 and title 32, chapter 26. The
33 department of public safety shall transmit the information to the national
34 instant criminal background check system. The superior court may access the
35 information of a person who is ordered into treatment to enforce or
36 facilitate a treatment order.

37 P. On request, the clerk of the court shall provide certified copies
38 of the commitment order to a law enforcement or prosecuting agency that is
39 investigating or prosecuting a prohibited possessor as defined in section
40 13-3101.

41 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT AND
42 A PROSECUTOR FILED A PETITION PURSUANT TO SECTION 13-4517, THE COURT SHALL
43 NOTIFY THE PROSECUTING AGENCY OF ITS FINDING. THE COURT MAY REMAND THE
44 PERSON TO THE CUSTODY OF THE SHERIFF FOR FURTHER DISPOSITION PURSUANT TO
45 SECTION 13-4517.

1 Sec. 15. Section 36-540.01, Arizona Revised Statutes, is amended to
2 read:

3 36-540.01. Conditional outpatient treatment

4 A. The medical director may issue an order for conditional outpatient
5 treatment for a patient ordered to undergo treatment pursuant to section
6 36-540 if, after consultation with staff familiar with the patient's case
7 history, the medical director determines with a reasonable degree of medical
8 probability that all of the following apply:

9 1. The patient no longer requires continuous inpatient
10 hospitalization.

11 2. The patient will be more appropriately treated in an outpatient
12 treatment program.

13 3. The patient will follow a prescribed outpatient treatment plan.

14 4. The patient will not likely become dangerous, suffer more serious
15 physical harm or serious illness or further deteriorate if the patient
16 follows a prescribed outpatient treatment plan.

17 B. The order for conditional outpatient treatment issued by the
18 medical director shall include a written outpatient treatment plan prepared
19 by staff familiar with the patient's case history and approved by the medical
20 director. The plan shall include all of the following:

21 1. A statement of the patient's requirements, if any, for supervision,
22 medication and assistance in obtaining basic needs such as employment, food,
23 clothing or shelter.

24 2. The address of the residence where the patient is to live and the
25 name of the person in charge of the residence, if any.

26 3. The name and address of any person, agency or organization assigned
27 to supervise an outpatient treatment plan or care for the patient, and the
28 extent of authority of the person, agency or organization in carrying out the
29 terms of the plan.

30 4. The conditions for continued outpatient treatment, which may
31 require periodic reporting, continuation of medication and submission to
32 testing, and may restrict travel, consumption of spirituous liquor and drugs,
33 associations with others and incurrence of debts and obligations or such
34 other reasonable conditions as the medical director may specify.

35 5. ANY OTHER PROVISIONS THAT THE MEDICAL DIRECTOR OR THE COURT
36 BELIEVES ARE NECESSARY TO PROTECT THE WELL-BEING OF THE PATIENT AND THE
37 PUBLIC.

38 C. THE COURT MAY ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO THE
39 COURT OF SPECIFIC INSTANCES OF NONCOMPLIANCE AS SPECIFIED BY THE COURT.

40 ~~C.~~ D. Before release for conditional outpatient treatment, the
41 patient shall be provided with copies and full explanations of the medical
42 director's order and the treatment plan. If, after full explanation, the
43 patient objects to the plan or any part of it, the objection and reasons for
44 the objection shall be noted in the patient's record. The medical director's

1 order and treatment plan shall be filed in the patient's medical file and
2 shall also be filed with the court.

3 ~~D.~~ E. The period for which conditional outpatient treatment may be
4 ordered may not exceed the remainder of the period of ~~court-ordered~~
5 COURT-ORDERED treatment.

6 ~~E.~~ F. Before the release of a patient for outpatient treatment, the
7 medical director shall give notice pursuant to section 36-541.01, subsection
8 ~~B- C~~ and a motion for a determination by the court as to whether the standard
9 for conditional release of the patient has been met may be made by the
10 persons and in the manner provided for in section 36-541.01, subsection ~~H- I~~.
11 Before the release of a person found to be a danger to self, ~~OR OTHERS OR~~
12 FOUND to ~~be a person with~~ HAVE a persistent or acute disability or a grave
13 disability for outpatient treatment, the medical director shall give notice
14 to the court that ordered the patient to undergo treatment. If criminal
15 charges against a patient involving death or serious physical injury or a
16 violation of title 13, chapter 14 are dismissed pursuant to section 13-4517,
17 the medical director shall notify the prosecuting agency if a civil
18 commitment order issued pursuant to this chapter expires or is terminated, or
19 if the patient is discharged to outpatient treatment. The medical director
20 shall provide this notice by mail at least five days before the anticipated
21 date of the expiration, termination or discharge.

22 ~~F.~~ G. The medical director shall require periodic reports concerning
23 the condition of patients on conditional outpatient treatment from any
24 person, agency or organization assigned to supervise an outpatient treatment
25 plan. The medical director shall require these reports at intervals not to
26 exceed thirty days.

27 ~~G.~~ H. The medical director shall review the condition of a patient on
28 conditional outpatient treatment at least once every thirty days and enter
29 the findings in writing in the patient's file. In conducting the review, the
30 medical director shall consider all reports and information received and may
31 require the patient to report for further evaluation.

32 ~~H.~~ I. The medical director may amend any part of the outpatient
33 treatment plan during the course of conditional outpatient treatment. If the
34 plan is amended, the medical director shall issue a new order including the
35 amended outpatient treatment plan. The new order and amended outpatient
36 treatment plan shall be filed in the patient's medical file. Copies of the
37 new order and outpatient treatment plan shall be immediately provided to the
38 patient and to any person, agency or organization assigned to supervise an
39 outpatient treatment plan. Copies of the new order and outpatient treatment
40 plan shall be immediately filed with the court AND, IF A PROSECUTOR FILED A
41 PETITION PURSUANT TO SECTION 13-4517, WITH THE PROSECUTING AGENCY.

42 ~~I.~~ J. The medical director may rescind an order for conditional
43 outpatient treatment and order the patient to return to a mental health
44 treatment agency at any time during the period of court ordered treatment if,
45 in the medical director's judgment, the patient has failed to comply with a

1 term of the outpatient treatment plan or if, for any reason, the medical
2 director determines that the patient needs inpatient treatment or that
3 conditional outpatient treatment is no longer appropriate. THE MEDICAL
4 DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT ORDER AND
5 THE PROSECUTING AGENCY IF A PROSECUTOR FILED A PETITION PURSUANT TO SECTION
6 13-4517.

7 ~~J.~~ K. If the medical director rescinds an order for conditional
8 outpatient treatment and the patient is returned to a mental health treatment
9 agency for inpatient treatment, the patient shall be informed of the
10 patient's right to judicial review and right to consult with counsel pursuant
11 to section 36-546.

12 ~~K.~~ L. If the medical director rescinds an order for conditional
13 outpatient treatment and orders the patient to return to a mental health
14 treatment agency, the medical director may request, OR A COURT MAY ORDER, a
15 peace officer or a designated officer or employee of the treatment agency to
16 take the patient into custody for immediate delivery to the agency pursuant
17 to section 36-544.

18 ~~L.~~ M. The medical director is not civilly liable for any act
19 committed by a patient while on conditional outpatient treatment if the
20 medical director has in good faith followed the requirements of this section.

21 ~~M.~~ N. This section does not prevent the medical director from
22 authorizing a patient ordered to undergo treatment pursuant to section 36-540
23 as a danger to self, ~~OR~~ a danger to others, ~~OR~~ a patient with a persistent
24 or acute disability or a grave disability to leave the treatment agency for
25 periods of no more than five days under the care, custody and control of a
26 spouse, relative or other responsible person if the medical director
27 determines that the patient will not become dangerous or suffer serious
28 physical harm or illness during that time.

29 ~~N.~~ O. The medical director may authorize a patient who is civilly
30 committed pursuant to section 36-540 to leave the state hospital grounds
31 unaccompanied if the leave is part of an inpatient individualized treatment
32 and discharge plan and the medical director determines that the patient will
33 not become dangerous or suffer serious physical harm or illness during that
34 time.

35 Sec. 16. Section 36-541.01, Arizona Revised Statutes, is amended to
36 read:

37 36-541.01. Release or discharge from treatment before
38 expiration of period ordered by court;
39 notification of intent to release or discharge;
40 hearing; immunity

41 A. A PATIENT WHO IS FOUND TO HAVE A GRAVE DISABILITY OR A PERSISTENT
42 OR ACUTE DISABILITY AND WHO IS ORDERED TO UNDERGO TREATMENT PURSUANT TO THIS
43 ARTICLE MAY BE RELEASED FROM INPATIENT TREATMENT WHEN, IN THE OPINION OF THE
44 MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY, THE LEVEL OF CARE
45 OFFERED BY THE AGENCY IS NO LONGER REQUIRED. THE PATIENT MAY AGREE TO

1 CONTINUE TREATMENT VOLUNTARILY. IF THE PATIENT IS TO BE RELEASED, THE
2 MEDICAL DIRECTOR SHALL ARRANGE FOR AN APPROPRIATE ALTERNATIVE PLACEMENT. IF
3 THE PATIENT WHO IS TO BE RELEASED FROM INPATIENT TREATMENT IS UNDER A
4 GUARDIANSHIP, THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY
5 SHALL NOTIFY THE GUARDIAN AND ANY RELEVANT REGIONAL BEHAVIORAL HEALTH
6 AUTHORITY TEN DAYS BEFORE THE INTENDED RELEASE DATE THAT THE PATIENT NO
7 LONGER REQUIRES THE LEVEL OF CARE THAT IS OFFERED BY THE AGENCY. THE
8 GUARDIAN AND, IF RELEVANT, THE REGIONAL BEHAVIORAL HEALTH AUTHORITY SHALL
9 ARRANGE ALTERNATIVE PLACEMENT WITH THE ADVICE AND RECOMMENDATIONS OF THE
10 MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY.

11 ~~A.~~ B. A patient who is ordered to undergo treatment pursuant to this
12 article may be released from treatment before the expiration of the period
13 ordered by the court if, in the opinion of the medical director of the mental
14 health treatment agency, the patient no longer is, as a result of a mental
15 disorder, a danger to others or a danger to self or no longer has a
16 persistent or acute disability or a grave disability. A person who is
17 ordered to undergo treatment as a danger to others OR WHO HAS HAD A PETITION
18 FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517 may not be released or
19 discharged from treatment before the expiration of the period for treatment
20 ordered by the court unless the medical director first gives notice of
21 intention to do so as provided by this section.

22 ~~B.~~ C. Before the release or discharge of a patient who is ordered to
23 undergo treatment, the medical director of the mental health treatment agency
24 shall notify the following of the medical director's intention to release or
25 discharge the patient:

26 1. The presiding judge of the court that entered the order for
27 treatment.

28 2. Any relative or victim of the patient who has filed a demand for
29 notice with the treatment agency.

30 3. Any person found by the court to have a legitimate reason for
31 receiving notice.

32 ~~C.~~ D. If ~~criminal charges against a patient involving death or~~
33 ~~serious physical injury or a violation of title 13, chapter 14 are dismissed~~
34 THE PATIENT IS UNDERGOING COURT-ORDERED TREATMENT AS THE RESULT OF A PETITION
35 FILED BY A PROSECUTING AGENCY pursuant to section 13-4517, the medical
36 director OF THE MENTAL HEALTH TREATMENT AGENCY shall notify the COURT AND THE
37 prosecuting agency if a civil commitment order issued pursuant to this
38 chapter expires or is terminated, or if the patient is discharged to
39 outpatient treatment. The medical director shall provide this notice by mail
40 at least five days before the anticipated date of the expiration, termination
41 or discharge.

42 ~~D.~~ E. If the MEDICAL director of the mental health treatment agency
43 is unable to determine, based on the information submitted pursuant to
44 subsection ~~E~~ F of this section, that a person who has filed a demand for
45 notice is a victim, the MEDICAL director shall inform that person that that

1 person's demand for notice is denied and that notice will not be given unless
2 ordered by the court pursuant to subsection ~~F~~ G of this section.

3 ~~F~~ F. A demand for notice by a relative or victim, and a petition for
4 notice by other persons, shall be on a form prescribed by the administration
5 and shall include the following information:

- 6 1. The full name of the person to receive notice.
- 7 2. The address to which notice is to be mailed.
- 8 3. The telephone number of the person to receive notice.
- 9 4. The relationship to the patient, if any, or the reasons why the
10 person believes the person has a legitimate reason to receive notice.

11 5. A statement that the person will advise the treatment agency in
12 writing by certified mail, return receipt requested, of any change in the
13 address to which notice is to be mailed.

14 6. The full name of the patient WHO IS ordered to undergo treatment as
15 a danger to others OR WHO HAS HAD A PETITION FILED BY A PROSECUTOR PURSUANT
16 TO SECTION 13-4517.

17 7. The mental health number assigned to the case by the superior
18 court.

19 ~~F~~ G. If the court receives a demand for notice by a relative or
20 victim, the court shall order the medical director of the mental health
21 treatment agency not to release or discharge the patient before the
22 expiration of the period of court-ordered treatment without first giving
23 notice to the relative or victim as provided in subsection ~~G~~ H of this
24 section. After considering a petition for notice, if the court finds that
25 the petitioner has a legitimate reason for receiving prior notice, the court
26 may order the medical director of the mental health treatment agency not to
27 release or discharge the patient from inpatient treatment before the
28 expiration of the period of court-ordered treatment without first giving
29 notice to the petitioner as provided in subsection ~~G~~ H of this section. Any
30 order for notice shall be delivered to the mental health treatment agency and
31 shall be filed with the patient's clinical record. If the patient is
32 transferred to another agency or institution, any orders for notice shall be
33 transferred with the patient.

34 ~~G~~ H. A notice of intention to release or discharge shall include the
35 following information:

- 36 1. The name of the patient to be released or discharged.
- 37 2. The type of release or discharge.
- 38 3. The date of anticipated release or discharge. Notices shall be
39 placed in the mail, postage prepaid and addressed to the court and to each
40 person for whom notice has been ordered, at least ten days before the date of
41 intended release or discharge, except that notice shall be sent to the
42 prosecuting agency at least five days before the date of intended release or
43 discharge. For purposes of computing the notice requirement, the day of
44 mailing shall not be counted.

~~H~~. I. Any person for whom prior notice is required pursuant to this section, or the court, may make a motion within the notification period that requires the court to determine whether the standard for release of the patient before the expiration of the period for court-ordered treatment has been met. A determination that the standard for release has been met may be made by the court based on a review of the record and any affidavits submitted without further hearing. For good cause, the court may order an evidentiary hearing. Whether or not a hearing is held, the court shall make a determination at the earliest possible time but no longer than three weeks after the anticipated date of release pursuant to subsection ~~G~~ H of this section, and the patient shall be retained for the additional time required for the court's determination. In making its determination the court may order an independent examination of the patient. If a motion is not made, the patient may be released in accordance with the terms set forth in the notice without further court order. IF A HEARING IS HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

~~I~~. J. If a motion has not been made pursuant to subsection ~~H~~ I of this section, the patient may be released or discharged and the medical director of the mental health treatment agency shall send to the court a certificate that the patient is no longer a danger to others or a danger to self or no longer has a persistent or acute disability or a grave disability as the result of a mental disorder and therefore is released before the expiration of the period ordered for treatment. The court shall enter an order terminating the patient's court-ordered treatment.

~~J~~. K. The medical director of the mental health treatment agency shall not be held civilly liable for any acts committed by a patient who is released before the expiration of the period of court-ordered treatment if the medical director has in good faith followed the requirements of this section.

Sec. 17. Section 36-542, Arizona Revised Statutes, is amended to read:

36-542. Discharge of patient at expiration of period ordered by court; change to voluntary status; immunity

A. A patient ordered by a court to undergo treatment pursuant to this article shall be discharged from treatment at the expiration of the period of treatment ordered unless one of the following occurs:

1. The person accepts voluntary treatment at the mental health treatment agency.

2. Before the discharge date, a new petition is filed in the county in which the patient is being treated. The proceedings shall then be governed by this article. The costs of the proceedings shall be a charge against the county in which the patient resided or was found prior to hospitalization.

3. AN APPLICATION FOR CONTINUED COURT-ORDERED TREATMENT IS GRANTED PURSUANT TO SECTION 36-543.

1 B. If a patient to be discharged is under guardianship, the medical
2 director of the mental health treatment agency shall notify the guardian ten
3 days before discharge.

4 C. IF A PATIENT TO BE DISCHARGED IS UNDERGOING COURT-ORDERED TREATMENT
5 AS A RESULT OF A PETITION FILED BY A PROSECUTOR PURSUANT TO SECTION 13-4517
6 AND THE PATIENT IS BEING DISCHARGED BECAUSE THE MEDICAL DIRECTOR HAS DECIDED
7 NOT TO FILE A NEW PETITION FOR COURT-ORDERED EVALUATION OR TREATMENT OR HAS
8 DECIDED NOT TO REQUEST THE COURT TO ORDER THAT THE PREVIOUS ORDER FOR
9 TREATMENT BE CONTINUED, THE PATIENT MAY NOT BE DISCHARGED OR RELEASED FROM
10 TREATMENT BEFORE COMPLIANCE WITH SECTION 36-541.01.

11 ~~C.~~ D. The medical director is not civilly liable for any acts
12 committed by a RELEASED OR discharged patient if the medical director has in
13 good faith followed the requirements of this article.

14 Sec. 18. Section 36-543, Arizona Revised Statutes, is amended to read:

15 36-543. Annual review of a patient with a grave disability or a
16 persistent or acute disability; notice; court order
17 for continued treatment; rules; immunity

18 ~~A. A patient who is found to have a grave disability or a persistent~~
19 ~~or acute disability and ordered to undergo treatment may be released from~~
20 ~~inpatient treatment when, in the opinion of the medical director of the~~
21 ~~mental health treatment agency, the level of care offered by the agency is no~~
22 ~~longer required. The patient may agree to continue treatment voluntarily.~~
23 ~~If the patient is to be released, the medical director shall arrange for an~~
24 ~~appropriate alternative placement.~~

25 ~~B. If a patient who is to be released from inpatient treatment is~~
26 ~~under guardianship, the medical director of the mental health treatment~~
27 ~~agency shall notify the guardian and any relevant regional behavioral health~~
28 ~~authority ten days before the intended release date that the ward no longer~~
29 ~~requires the level of care offered by the agency. The guardian and, if~~
30 ~~relevant, the regional behavioral health authority shall arrange alternative~~
31 ~~placement with the advice and recommendations of the medical director of the~~
32 ~~mental health treatment agency.~~

33 ~~C. The medical director of the mental health treatment agency is not~~
34 ~~civilly liable for any acts committed by the released patient if the medical~~
35 ~~director has in good faith complied with the requirements of this article.~~

36 ~~D.~~ A. Within ninety days before the expiration of a court order for
37 treatment, the medical director of the mental health treatment agency shall
38 conduct an annual review of a patient who has been found to have a grave
39 disability or a persistent or acute disability and WHO is undergoing
40 court-ordered treatment to determine whether the continuation of
41 court-ordered treatment is appropriate and to assess the needs of the patient
42 for guardianship or conservatorship, or both. The annual review shall
43 consist of the mental health treatment and clinical records contained in the
44 patient's treatment file. The mental health treatment agency shall keep a
45 record of the annual review. If the medical director believes that a

1 continuation of court-ordered treatment is appropriate, the medical director
2 of the mental health treatment agency shall appoint one or more psychiatrists
3 to carry out a psychiatric examination of the patient. In any proceeding
4 conducted pursuant to this section, a patient has the right to have an
5 analysis of the patient's mental condition by an independent evaluation
6 pursuant to section 36-538.

7 ~~E.~~ B. Each examiner participating in the psychiatric examination of
8 the patient shall submit a report to the medical director of the mental
9 health treatment agency that includes the following:

10 1. The examiner's opinions as to whether the patient continues to have
11 a grave disability or a persistent or acute disability as the result of a
12 mental disorder and be in need of continued court-ordered treatment. In
13 evaluating the patient's need for continued court-ordered treatment, the
14 examiner must consider, along with all other evidence, the patient's history
15 before and during the current period of court-ordered treatment, the
16 patient's compliance with recommended treatment and any other evidence
17 relevant to the patient's ability and willingness to follow recommended
18 treatment with or without a court order.

19 2. A statement as to whether suitable alternatives to court-ordered
20 treatment are available.

21 3. A statement as to whether voluntary treatment would be appropriate.

22 4. A review of the patient's status as to guardianship or
23 conservatorship, or both, the adequacy of existing protections of the patient
24 and the continued need for guardianship or conservatorship, or both. If the
25 examiner concludes that the patient's needs in these areas are not being
26 adequately met, the examiner's report shall recommend that the court order an
27 investigation into the patient's needs.

28 5. If the patient has an existing guardian who does not have the
29 mental health powers authorized pursuant to section 14-5312.01, a
30 recommendation as to whether the additional mental health powers authorized
31 by section 14-5312.01 should be imposed on the existing guardian and whether
32 the patient's needs can be adequately addressed by a guardian with mental
33 health powers without the need for a court order for treatment or whether the
34 court order for treatment should continue regardless of the additional mental
35 health powers imposed on the guardian.

36 6. The results of any physical examination conducted during the period
37 of court-ordered treatment if relevant to the psychiatric condition of the
38 patient.

39 ~~F.~~ C. After conducting the annual review as prescribed in this
40 section, if the medical director believes that continued court-ordered
41 treatment is necessary or appropriate, not later than thirty days before the
42 expiration of the court order for treatment, the medical director shall file
43 with the court an application for continued court-ordered treatment alleging
44 the basis for the application and shall file simultaneously with the
45 application any psychiatric examination conducted as part of the annual

1 review. If the patient is under guardianship, the medical director shall
2 mail a copy of the application to the patient's guardian.

3 ~~E~~ D. If an application for continued court-ordered treatment is
4 filed, all of the following apply:

5 1. If the patient does not have an attorney, the court shall appoint
6 an attorney to represent the patient.

7 2. Within ten days after appointment, an attorney appointed pursuant
8 to this subsection, to the extent possible, shall fulfill the duties imposed
9 pursuant to section 36-537, review the medical director's report and the
10 patient's medical records, interview any physician who prepared a report on
11 the annual review and file a response requesting a hearing or submitting the
12 matter to the court for a ruling based on the record without a hearing.

13 3. If a hearing is not requested, the court shall rule on the
14 application or set the matter for hearing. If a hearing is requested, the
15 hearing shall be held within three weeks after the request for hearing is
16 filed. The hearing may be continued for good cause on motion of a party or
17 on the court's own motion, and the expiration of the current court order for
18 treatment may be extended until a ruling by the court on an application filed
19 pursuant to this subsection.

20 4. The patient's attorney must be present at all hearings and may
21 subpoena and cross-examine witnesses and present evidence. The patient has
22 the right to attend all hearings, but may choose not to attend a hearing.
23 The patient's attorney may waive the patient's presence after speaking with
24 the patient and confirming that the patient understands the right to be
25 present and does not desire to attend. If the patient is unable to be
26 present at the hearing for medical or psychiatric reasons and the hearing
27 cannot be conducted where the patient is being treated or confined, or the
28 patient cannot appear by another reasonably feasible means, the court shall
29 require clear and convincing evidence that the patient is unable to be
30 present at the hearing and on such a finding may proceed with the hearing in
31 the patient's absence.

32 5. The evidence presented by the applicant includes the testimony of
33 one or more witnesses acquainted with the patient during the period of
34 court-ordered treatment, which may be satisfied by a statement agreed on by
35 the parties, and the testimony of any physician who performed an annual
36 review of the patient, which may be satisfied by stipulating to the admission
37 of the examining physicians' written report prepared pursuant ~~T~~0 subsection
38 ~~E~~ B of this section. The court may waive the need for the applicant to
39 present the testimony of witnesses acquainted with the patient as required by
40 this subsection, if it finds that the need for a continued court order for
41 treatment has been established by clear and convincing evidence from the
42 other testimony and evidence presented at the hearing.

43 6. At a hearing held pursuant to this subsection, the court, with
44 notice, may impose on an existing guardian additional powers pursuant to
45 section 14-5312.01. If the court finds that the patient's needs can be

adequately met by an existing guardian with the additional powers pursuant to section 14-5312.01 and that a court order for treatment is not necessary to ensure compliance with necessary treatment, the court may terminate the court order for treatment or decline to issue an order continuing court-ordered treatment. The court may also order an investigation into the need for guardianship or conservatorship, or both, and may appoint a suitable person or agency to conduct the investigation. The appointee may include a court-appointed guardian ad litem, a court-appointed investigator pursuant to section 14-5308 or the public fiduciary if there is no person willing and qualified to act in that capacity. The court shall give notice of the appointment to the appointee within three days after the appointment. The appointee shall submit the report of the investigation to the court within twenty-one days. The report shall include recommendations as to who should be guardian or conservator, or both, and the findings and reasons for the recommendation. If the investigation and report so indicate, the court may authorize an appropriate person to file a petition for appointment of a guardian or conservator for the patient.

~~H.~~ E. If a hearing is held pursuant to subsection ~~G~~ D of this section, the party seeking the renewal of the court order must prove all of the following by clear and convincing evidence:

1. The patient continues to have a mental disorder and, as a result of that disorder, has either a persistent or acute disability or a grave disability.

2. The patient is in need of continued court-ordered treatment.

3. The patient is either unwilling or unable to accept treatment voluntarily.

~~I.~~ F. After a hearing held pursuant to subsection ~~G~~ D of this section, the court may order the patient to be released from court-ordered treatment or to undergo continued court-ordered treatment for a period not to exceed the time periods prescribed in section 36-540, subsection D.

~~J.~~ G. The director shall create and operate a program to ensure that the examination and review of persons with grave disabilities or persistent or acute disabilities under court order are carried out in an effective and timely manner. The director shall adopt rules needed to operate this program.

H. THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY IS NOT CIVILLY LIABLE FOR ANY ACTS COMMITTED BY THE RELEASED PATIENT IF THE MEDICAL DIRECTOR HAS IN GOOD FAITH COMPLIED WITH THE REQUIREMENTS OF THIS ARTICLE.

Sec. 19. Section 36-544, Arizona Revised Statutes, is amended to read:

36-544. Unauthorized absences; violation; classification; tolling period; hearing; civil liability; definition

A. When any patient who is being evaluated or treated is absent without proper authorization from an evaluation agency or a mental health treatment agency, or when an order for outpatient treatment is rescinded, any peace officer shall, upon oral or written request of the medical director of

1 the agency and without the necessity of a warrant or court order, or any
2 officer or employee of the agency who has been previously designated in
3 writing by the medical director of the agency to perform such duties may,
4 take into custody and deliver such patient to the agency. Such officers and
5 employees of the agency have the powers and duties of peace officers so far
6 as is necessary to carry out the provisions of this section. IF NECESSARY,
7 THE EVALUATION OR TREATMENT AGENCY MAY APPLY TO THE COURT FOR A WARRANT OR
8 COURT ORDER DIRECTING ANY PEACE OFFICER TO TAKE A PATIENT WHO IS ABSENT
9 WITHOUT PROPER AUTHORIZATION INTO CUSTODY AND DELIVER THE PATIENT TO THE
10 AGENCY.

11 B. Any person who intentionally assists any patient being evaluated or
12 treated in an agency to be absent from the agency without proper
13 authorization, or who intentionally assists a patient whom he knows to be
14 absent without proper authorization or whom he knows to be a patient whose
15 order for outpatient treatment has been rescinded and who has been ordered to
16 return to the agency, or to resist being returned to the agency after such
17 absence is guilty of a class 2 misdemeanor.

18 C. The period of court-ordered treatment ~~ceases to run~~ IS TOLLED
19 during the unauthorized absence of the patient ~~from the jurisdiction or from~~
20 ~~any required supervision and resumes running only on the patient's voluntary~~
21 ~~or involuntary return to the treatment agency.~~ ON THE PATIENT'S RETURN TO
22 TREATMENT, THE COURT SHALL CONFIRM THE PERIOD THAT IS TOLLED.

23 ~~D. A patient who remains on unauthorized absence status continuously~~
24 ~~for at least ninety days may petition the court on his return to the~~
25 ~~treatment agency for a hearing to determine his current mental status and his~~
26 ~~present need for treatment. The court shall order a hearing if requested by~~
27 ~~the patient, his legal guardian or an interested party. The hearing shall be~~
28 ~~held within seventy two hours after the request.~~

29 ~~E. Subsections C and D of this section shall apply only to inpatient~~
30 ~~treatment pursuant to section 36-540, subsection A, paragraphs 2 and 3.~~

31 D. A PATIENT WHOSE PERIOD OF COURT-ORDERED TREATMENT IS TOLLED FOR A
32 PERIOD OF AT LEAST SIXTY CONTINUOUS DAYS MAY REQUEST A JUDICIAL REVIEW
33 PURSUANT TO SECTION 36-546 ON THE PATIENT'S VOLUNTARY OR INVOLUNTARY RETURN
34 TO TREATMENT. DURING THE PERIOD TOLLED BY A COURT ORDER ISSUED PURSUANT TO
35 THIS SECTION, THE TREATMENT AGENCY SHALL MAKE ACTIVE AND DILIGENT EFFORTS TO
36 FIND AND RETURN THE PATIENT TO APPROPRIATE TREATMENT AND AT LEAST ONCE EVERY
37 SIXTY DAYS, OR AS OFTEN AS OTHERWISE ORDERED BY THE COURT, SHALL FILE A
38 REPORT OF THE AGENCY'S EFFORTS WITH THE COURT. AFTER THE PERIOD OF TREATMENT
39 IS TOLLED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS, IF THE COURT IS SATISFIED
40 THAT THE AGENCY HAS MADE ACTIVE AND DILIGENT EFFORTS TO FIND AND RETURN THE
41 PATIENT TO APPROPRIATE TREATMENT, ON PETITION OF THE TREATMENT AGENCY, THE
42 COURT MAY TERMINATE THE ORDER FOR TREATMENT OR MAY ORDER THE TREATMENT AGENCY
43 TO MAKE FURTHER SPECIFIC EFFORTS TO FIND AND RETURN THE PATIENT TO
44 APPROPRIATE TREATMENT. FOR A PATIENT WHO HAS HAD A PETITION FILED BY A

1 PROSECUTOR PURSUANT TO SECTION 13-4517, THE TREATMENT AGENCY SHALL PROVIDE
2 NOTICE TO THE PROSECUTING AGENCY OF THE PETITION TO TERMINATE TREATMENT.

3 E. THE PERIOD OF TREATMENT UNDER A COURT ORDER MAY NOT BE TOLLED FOR
4 MORE THAN THREE HUNDRED SIXTY-FIVE DAYS.

5 F. IF THE TREATMENT AGENCY HAS IN GOOD FAITH FOLLOWED THE REQUIREMENTS
6 OF THIS SECTION, THE TREATMENT AGENCY IS NOT LIABLE IN A CIVIL ACTION FOR
7 DAMAGES THAT RESULT FROM THE ACTIONS OF A PATIENT DURING ANY PERIOD OF
8 TREATMENT TOLLED BY AN ORDER ISSUED PURSUANT TO THIS SECTION.

9 G. FOR THE PURPOSES OF THIS SECTION, "ABSENT WITHOUT PROPER
10 AUTHORIZATION" OR "UNAUTHORIZED ABSENCE" INCLUDES BEING ABSENT FROM AN
11 INPATIENT TREATMENT FACILITY WITHOUT AUTHORIZATION, NO LONGER LIVING IN A
12 PLACEMENT OR RESIDENCE SPECIFIED BY THE TREATMENT PLAN WITHOUT AUTHORIZATION
13 AND LEAVING OR FAILING TO RETURN TO THE COUNTY OR STATE WITHOUT
14 AUTHORIZATION.

15 Sec. 20. Section 36-546, Arizona Revised Statutes, is amended to read:

16 36-546. Judicial review; right to be informed; request;
17 jurisdiction

18 A. In addition to the procedure for applying for a writ of habeas
19 corpus, as provided in title 13, chapter 38, article 26, a patient receiving
20 court-ordered treatment or any person acting on the patient's behalf may
21 request the patient's release pursuant to the following:

22 1. A request in writing may be presented to any member of the
23 treatment staff of the agency providing the patient's treatment. The request
24 may be made on a prescribed form that shall be prepared by the facility and
25 made available for use by any person. The completed form shall identify:

26 (a) The patient being treated and the agency at which the patient is
27 being treated.

28 (b) The person to whom the request for release was made.

29 (c) The person making the request for release, indicating whether the
30 person is the patient being treated or someone acting on the person's behalf.

31 2. The request, when signed and dated by the person making the request
32 for release, shall be delivered to the medical director of the agency.
33 Within three days of receipt of the request, the medical director shall
34 deliver the form, along with a current psychiatric report of the patient's
35 condition, to the clerk of the court. If the person presenting the request
36 refuses to sign the form, the medical director of the agency shall proceed as
37 if the form had been signed and shall note on the form the circumstances as
38 to why the form was not signed.

39 B. The patient shall be informed of the patient's right to judicial
40 review by the medical director of the agency and the patient's right to
41 consult with counsel at least once each sixty days while the patient is
42 undergoing court-ordered treatment. The notification required by this
43 subsection shall be recorded in the clinical record of the patient by the
44 individual who gave the notice.

1 C. With the exception of requests made pursuant to section 36-540,
2 subsection E, paragraphs ~~4-5~~ and ~~5-6~~ and section 36-540.01, subsection ~~J~~-K
3 for judicial review, a request for judicial review may not be made sooner
4 than sixty days after the issuance of the order for treatment or a hearing on
5 a previous petition for habeas corpus or the issuance of the court order or
6 other final resolution determining a previous request for judicial review by
7 the patient.

8 D. Judicial review shall be in the superior court in the county in
9 which the patient is being treated. That court may review the additional
10 material presented and enter its order without necessity of further hearing.

11 E. The reviewing court may order a further hearing on the affidavit of
12 the attorney for the patient setting forth the need for further evidentiary
13 hearing and the reasons why the hearing is necessary before the time set for
14 the release of the patient.

15 F. The patient shall be informed of the patient's right to consult an
16 attorney by the person or court to whom the patient makes the request for
17 release at the time the patient makes the request and, in the case of
18 confinement in an agency, by the reviewing court within one day of its
19 receipt of notice from the medical director of the agency where the patient
20 is being treated. The patient shall be permitted to consult an attorney to
21 assist in preparation of a petition for the writ of habeas corpus and to
22 represent the patient in the hearing. If the patient is not represented by
23 an attorney, the reviewing court, within two days of its notice to the
24 patient of the patient's right to counsel, shall appoint an attorney to
25 assist the patient in the preparation of a petition and to represent the
26 patient in the hearing.

27 G. The medical director of the mental health treatment agency, at
28 least twenty-four hours before the hearing, shall provide the patient's
29 attorney with a copy of the patient's medical records.

30 H. The patient's attorney shall fulfill all of the following minimal
31 duties:

32 1. Within twenty-four hours of appointment, conduct an interview with
33 the patient.

34 2. At least twenty-four hours before the hearing, interview the
35 patient's treatment physician or psychiatric and mental health nurse
36 practitioner if available.

37 3. Before the hearing, examine the clinical record of the patient.

38 4. Before the hearing, examine the patient's court records as to the
39 patient's involuntary treatment.

40 I. An attorney who does not fulfill the duties prescribed by
41 subsection H of this section is subject to contempt of court.

42 Sec. 21. Section 36-3701, Arizona Revised Statutes, is amended to
43 read:

44 36-3701. Definitions

45 In this article, unless the context otherwise requires:

1 1. "Agency" means any agency that is authorized to direct the release
2 of a person who is serving a sentence or term of confinement or who is
3 receiving treatment, including a state or federal prison, a county jail and
4 the Arizona state hospital OR OTHER MENTAL HEALTH TREATMENT AGENCY.

5 2. "Competent professional" means a person who is:

6 (a) Familiar with the state's sexually violent persons statutes and
7 sexual offender treatment programs available in this state.

8 (b) Approved by the superior court as meeting court approved
9 guidelines.

10 3. "Conviction" includes a finding of guilt at any time for a sexually
11 violent offense or an order of the juvenile court adjudicating the person
12 delinquent for any sexually violent offense.

13 4. "Less restrictive alternative" means court ordered treatment in a
14 setting that is less restrictive than total confinement and that is conducted
15 in a setting approved by the superintendent of the state hospital.

16 5. "Mental disorder" means a paraphilia, personality disorder or
17 conduct disorder or any combination of paraphilia, personality disorder and
18 conduct disorder that predisposes a person to commit sexual acts to such a
19 degree as to render the person a danger to the health and safety of others.

20 6. "Sexually violent offense" means any of the following:

21 (a) Indecent exposure to a person who is under fifteen years of age
22 pursuant to section 13-1402, public sexual indecency to a minor pursuant to
23 section 13-1403, sexual conduct with a minor pursuant to section 13-1405,
24 sexual assault pursuant to section 13-1406, molestation of a child pursuant
25 to section 13-1410, continuous sexual abuse of a child pursuant to section
26 13-1417 or sexual assault of a spouse if the offense was committed before
27 August 12, 2005.

28 (b) Second degree murder pursuant to section 13-1104, first degree
29 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
30 aggravated assault pursuant to section 13-1204, unlawful imprisonment
31 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
32 burglary in the first degree pursuant to section 13-1508 if the court at the
33 time of sentencing or civil commitment proceedings determines beyond a
34 reasonable doubt that the act was sexually motivated pursuant to section
35 13-1118.

36 (c) An attempt, a solicitation, a facilitation or a conspiracy to
37 commit an offense listed in subdivision (a) or (b) of this paragraph.

38 (d) An act committed in another jurisdiction that if committed in this
39 state would be a sexually violent offense listed in subdivision (a), (b) or
40 (c) of this paragraph.

41 (e) A conviction for a felony offense that was in effect before
42 September 1, 1978 and that if committed on or after September 1, 1978 would
43 be comparable to a sexually violent offense listed in subdivision (a) or (b)
44 of this paragraph.

1 7. "Sexually violent person" means a person to whom both of the
2 following apply:

3 (a) Has ever been convicted of or found guilty but insane of a
4 sexually violent offense or was charged with a sexually violent offense and
5 was determined incompetent to stand trial.

6 (b) Has a mental disorder that makes the person likely to engage in
7 acts of sexual violence.

8 Sec. 22. Effective date

9 This act is effective from and after December 31, 2016.